

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | CC Docket No. 90-571 |
| Telecommunications Relay Services and |) | |
| Speech-to-Speech Services for |) | CC Docket No.98-67 |
| Individuals with Hearing and Speech |) | |
| Disabilities |) | CG Docket No. 03-123 |

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (“SBC”) hereby submits these comments in response to the Further Notice of Proposed Rulemaking¹ (“*Further Notice*”) in the above-captioned dockets. Therein, the Commission seeks comment on a number of issues pertaining to video relay services (“VRS”) and IP Relay services. Specifically, the Commission asks how it should determine the jurisdiction of calls made with these services, the appropriate cost recovery scheme and compensation rates for these services, and the application of certain technical standards to these services. Additionally, the Commission seeks comment on curbing abusive TRS calls directed at Communications Assistants (“CAs”) and whether it should adopt regulations permitting CAs to terminate abusive TRS calls.

I. SUMMARY

SBC currently is not a provider of either VRS or IP relay services, but firmly supports people with disabilities having access to the full range of modern communications products and services.² SBC also believes that VRS and IP Relay services are IP-enabled services that are

¹ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *Further Notice of Proposed Rulemaking*, CC Docket Nos.90-571, 98-71 and CG Docket No.03-123 (June 30, 2004).

² In the *Further Notice*, the Commission seeks comment on whether IP Relay and VRS should be mandatory TRS offerings, with the same operational and technical standards as other mandatory TRS. *Further Notice* ¶¶231-32, 246, 248. Given SBC’s lack of experience in directly providing these services,

jurisdictionally interstate services and should be subject to a predominantly federal regulatory regime. We urge the Commission, however, to defer any final jurisdictional determinations regarding VRS and IP Relay services until after it addresses the jurisdictional issues raised in the broader *IP-Enabled Services NPRM*,³ in which the Commission is crafting a comprehensive regulatory regime for a wide range of IP-based services. Finally, SBC supports the Commission's efforts to curtail the abusive treatment of CAs.

II. JURISDICTION OF VRS AND IP RELAY SERVICES.

A. The Commission Should Defer Jurisdictional Determinations for VRS and IP Relay Services Pending the Outcome of the *IP-Enabled Services NPRM*.

The Commission currently is addressing the jurisdictional nature of IP-based services in an expansive rulemaking proceeding designed to address a myriad of issues concerning the appropriate regulatory framework for these services.⁴ In that proceeding, the Commission is seeking extensive comment “on the jurisdictional nature of IP-enabled services.”⁵ Until final Commission resolution of the jurisdictional issues raised in the *IP-Enabled Services NPRM*, the most logical approach in the instant proceeding is for the Commission to defer ruling on the narrower jurisdictional questions presented by the provisioning of VRS and IP Relay service, both of which are IP-enabled services.⁶ By deferring a ruling here, the Commission can ensure that any final ruling it reaches on the jurisdiction of VRS and IP Relay services is fully consistent with the Commission's jurisdictional decisions in the *IP-Enabled Services* proceeding.

SBC will reserve its comments regarding these issues until it has had the opportunity to consider the comments and proposals of those with expertise in the provisioning of such services.

³ *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No.04-36 (rel. March. 10, 2004) (“*IP-Enabled Services NPRM*”).

⁴ *Id.* at 38.

⁵ *Id.* ¶¶ 38-41.

⁶ See *infra* section II.B.

Moreover, deferring a jurisdictional ruling in the instant proceeding will not impede the deployment of VRS and IP Relay services. Indeed, VRS and IP Relay providers currently are offering these relay services and currently are reimbursed for costs associated with these services from the Interstate TRS Fund. As discussed below, given the inherent interstate nature of these TRS services, there is certainly ample justification for continued treatment of these services as interstate for purposes of cost recovery until the Commission renders its decision in the *IP-Enabled Services* proceeding. Once that proceeding is concluded, the determinations rendered therein will govern the jurisdictional treatment of VRS and IP Relay, thus ensuring a comprehensive and fully consistent regulatory regime for all IP-enabled services.

B. VRS and IP Relay Services Are IP-Enabled Services Subject to Federal Jurisdiction.

To the extent the Commission decides to address the jurisdictional nature of VRS and IP Relay services, either in the instant proceeding or in conjunction with the *IP-Enabled Services NPRM*, the Commission should conclude that such services are, in fact, IP-enabled services subject to federal jurisdiction. As SBC demonstrated in its comments on the *IP-Enabled Services NPRM*, IP-enabled services should be defined to consist of (a) IP networks and their associated capabilities and functionalities (i.e. an IP platform), and (b) services and applications provided over an IP platform that enable an end user to send or receive a communication in IP format. Under this definition, the touchstone for determining whether a service is an IP-enabled service is whether the customer can send or receive communications in IP format.⁷ For IP Relay service, end users originate calls via an Internet connection (typically over a broadband link, e.g., DSL or cable modem service) and then send messages to and receive messages from CAs in IP format. Similarly with VRS, TRS end users send and receive video messages in IP format. SBC therefore believes that IP Relay and VRS would qualify as IP-enabled services.⁸

⁷ SBC IP-Enabled Services Reply Comments at 24.

⁸ The fact that VRS and IP Relay communications may subsequently be terminated on the PSTN does not change their status as IP-enabled services provided to the calling party. See SBC IP-Enabled Services Comments at 32.

As explained in detail in SBC's comments on the *IP-Enabled Services NPRM*, SBC also believes that all IP-enabled services are inherently interstate.⁹ IP-enabled services necessarily involve interstate communications because they offer users the ability to communicate with other users and information services dispersed across the Internet. Indeed, as the Commission has explained, Internet communications "interact[] with a global network of connected computers,"¹⁰ and thus involve computers in multiple locations, often across state and national boundaries."¹¹ That IP-enabled services are interstate communications is further underscored by their inherent portability: end users may use them wherever they have access to a broadband connection. For example, IP Relay and VRS end users can take their laptops to virtually any location in the world and initiate an IP Relay or VRS communication, without the TRS provider, the CA or the called party having any way to know that the end user has left his or her home.

IP-enabled services are also indivisibly interstate because, even when they can be said to have interstate and intrastate components, differentiating between those components is completely impractical if not impossible. The nature of IP technology renders such differentiation impractical because IP technology translates all forms of communications into packets, permitting these packets to be flexibly and efficiently routed to their destinations. As convergence continues, a data stream may at any given time include packets bound for points both within and outside of a particular state. However, there is no commercially feasible way for carriers to track, on a bit-by-bit basis, the exact routes of those packets. This is because the routing of IP-based communications is based on matching a numeric IP address to a particular device, such as an end user's computer or IP phone, a router, or a server to name a few – rather than an immovable geographic destination. The resulting portability of IP-enabled services and

⁹ Comments of SBC Communications Inc., *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No.04-36 (rel. March. 10, 2004), filed May 28, 2004.

¹⁰ *ISP Remand Order* at 9178, ¶58.

¹¹ *Id.* at 9178, ¶58 n.115.

devices – i.e. the ability to access these services by plugging an IP device into any broadband connection – itself thwarts any effort to isolate an intrastate component of such services.

The difficulties in separating the interstate and intrastate components of IP-enabled services exist regardless of whether one end of that service touches the PSTN, which is the case for VRS and IP Relay services. While it may be easy enough to locate the PSTN end of such a communication, it is still commercially infeasible to identify the physical location at the IP end. Thus, for the same basic reason that it would be infeasible to carve out an “intrastate” component of IP-enabled services that always have both “feet” in an IP network, it would also be difficult to carve out an intrastate component of services like VRS and IP Relay that may interconnect with the PSTN and thus permit communications with one “foot” in an IP network.

Notwithstanding widespread agreement among commenters in the *IP-Enabled Services* proceeding about the inherently interstate nature of IP-enabled services, the Commission included a curious footnote in the instant *Further Notice* suggesting that TRS calls, including IP Relay calls (and presumably VRS calls), are actually two separate calls — one between the end user and the CA and one between the CA and the called party.¹² Based on this two-call theory, the Commission suggests that TRS calls are somehow uniquely different than other calls for jurisdictional purposes. The Commission’s own cost recovery rules for TRS, however, seem to undercut the Commission’s claims in this footnote. Specifically, section 64.604(c)(5)(iii)(E) of the Commission’s rules governs how payments from the TRS fund are made to TRS providers and states that “TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed *interstate TRS calls completed through the TRS center* beginning after call set-up and concluding after the last message call unit.”¹³ This language suggests that TRS calls are evaluated for jurisdictional cost recovery purposes on an end-to-end basis, *i.e.*, from the calling party through the TRS center to the called party — not as

¹² *Further Notice* ¶230 n.657.

¹³ 47 C.F.R. §64.604(c)(5)(iii)(E) (emphasis added).

two jurisdictionally separate calls between the end points and the TRS center. SBC urges the Commission to clarify this apparent inconsistency between its statements in the *Further Notice* and its TRS rules.

C. The Commission Should Not Adopt Any Mechanisms at This Time That Would Purportedly Segregate VRS and IP Relay Services Into Separate Interstate and Intrastate Components.

In addition to seeking comment on the jurisdictional nature of VRS and IP Relay service, the Commission seeks comment on specific mechanisms it could use to separate these services into discrete interstate and intrastate components. As discussed above, SBC strongly believes that IP-enabled services (which include VRS and IP Relay services) are inherently interstate and cannot be segregated into separately-regulated components, and the Commission is seeking comment on this precise issue in the *IP-Enabled Services NPRM*. Thus, it would be highly premature for the Commission to adopt any mechanisms for purportedly separating the interstate and intrastate components of VRS and IP Relay service before the Commission has even determined whether such separation is possible.

Moreover, forcing TRS providers at this juncture to develop a capability to identify those VRS and IP Relay calls that are purportedly intrastate and those that are purportedly interstate would unnecessarily burden the future development of such services. As the Commission has previously explained, given the inherent geographic anonymity of the IP addressing schemes, “[a]ttempting to require [the provider] to locate its members for the purpose of adhering to a regulatory analysis that served [the legacy PSTN] would be forcing changes on this service for the sake of regulation itself, rather than for any particular policy purpose....[I]mposing this substantial burden would make little sense and would almost certainly be significant and negative for the development of new and innovative IP services and applications.”¹⁴

¹⁴ *Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, 19 FCC Rcd 3307, 3320-21, ¶20 (2004).

In addition, adoption of either of the proposed solutions to determine jurisdiction — the fixed allocator¹⁵ or registration process¹⁶ — would impose significant, and potentially unnecessary, costs and administrative burdens on carriers. For example, to implement the registration process, carriers would have to develop new and detailed processes to implement and track customer profiles, which likely would necessitate significant alteration to carrier systems. TRS providers would have no ability to confirm the accuracy of the calling location information provided by end users, thereby undermining the very objective of a registration process which is to determine the *correct* jurisdiction of the call. Additionally, the proposed registration process would further delay the call set-up for these calls. The Commission and TRS end users have previously expressed concern with the call set-up times for TRS calls.¹⁷ Requiring TRS end users to register or confirm their location prior to completing an IP Relay or VRS call would only exacerbate the already unavoidable delays associated with TRS calls.

In sum, given that TRS providers currently are compensated for VRS and IP Relay calls, and that VRS and IP Relay services are inherently interstate, maintaining the status quo, until final resolution of the issues in *IP-Enabled Services* proceeding, will best serve the interests of all parties — particularly those who are experiencing the benefits of VRS and IP Relay service today.

¹⁵ A fixed allocator would serve as a proxy to apportion IP Relay calls between the Interstate TRS Fund and the states. As SBC pointed out in its reply comments on the *IP-Enabled Services NPRM*, absent a lawful basis for state jurisdiction over IP-enabled services, there can be no “allocation” of jurisdictional authority to state regulators. SBC Reply Comments at 13-14.

¹⁶ Under this process, IP Relay and VRS providers would be required to register and have on file a profile from users of these services that indicates the geographic location from which they are placing the IP Relay or VRS call.

¹⁷ See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, *Notice of Proposed Rulemaking*, CC Docket No. 98-71 and CG Docket No.03-123, paras. 116-117 (June 17, 2004); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, CC Docket Nos.90-571, 98-71 and CG Docket No.03-123 (June 30, 2004).

III. HARASSMENT OF COMMUNICATION ASSISTANTS

The *Further Notice* seeks comment on what steps the Commission can take, consistent with Section 225 and other applicable laws, to ensure that CAs are not subject to abusive conduct or language during their provision of TRS.¹⁸ SBC fully supports TRS providers having the ability to terminate or refuse calls wherein the caller or called party communicates obscene or threatening language directed toward the CA. SBC recognizes that TRS end users want the ability to communicate with willing participants in the manner they deem appropriate, but as the Supreme Court has held, the right to use obscene language or have obscene material in one's home "does not imply a right to transport obscenity, even to a willing recipient for private use."¹⁹ First Amendment jurisprudence makes clear that obscene language²⁰ and threatening language²¹ are not protected speech and thus are subject to government regulation.

Specifically, SBC supports adoption of a TRS-specific regulation enabling TRS providers to terminate or refuse calls wherein an end user communicates obscene or threatening speech directed toward the CA. While Section 223 and other state and federal laws prohibit the transmission or use of such language, SBC believes that a TRS-specific regulation that specifies and defines the type of speech that could trigger termination or refusal of TRS service from a TRS provider would be beneficial to TRS providers and end users alike. To ensure the efficacy

¹⁸ *Further Notice* ¶255.

¹⁹ See *United States v. Reidel*, 402 U.S. 351, 356, 91 S.Ct 1410, 1412-13, 28 L.Ed.2d 813 (1971).

²⁰ See *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 122 S. Ct. 1700, 152 L.Ed.2d 771 (2002) ("Obscene speech, for example, has long been held to fall outside the purview of the First Amendment."); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 117 S. Ct. 2329, 138 L. Ed.2d 874 (1997) ("...obscene speech can be banned totally because it enjoys no First Amendment protection."); *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115, 109 S. Ct. 2829, 106 L.Ed.2d 93 (1989) ("The protection of the First Amendment does not extend to obscene speech.").

²¹ See *Virginia v. Black*, 538 U.S. 343, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003) ("The First Amendment permits a State to ban 'true threats,' which encompass those statements where speaker means to communicate serious expression of intent to commit act of unlawful violence to particular individual or group of individuals, and speaker need not actually intend to carry out threat;...").

of such a requirement, the Commission should provide clear guidance, that would be easily understandable by CAs and end users alike, on how to identify “obscene” and “threatening” language. Such guidance is vitally important to remove ambiguity as to the types of calls that are subject to termination or refusal and to further minimize TRS provider and ultimately CA subjectivity in gauging whether particular language qualifies as obscene or threatening.

IV. CONCLUSION

For the foregoing reasons, the Commission should defer consideration of any jurisdictional determinations for VRS and IP Relay services until it resolves the jurisdictional issues raised in the *IP-Enabled Services NPRM*. However, to the extent the Commission addresses these jurisdictional issues here, it should conclude that VRS and IP Relay services are inherently interstate. Thus, TRS providers should continue to receive reimbursement for such services from the Interstate TRS Fund.

Further, the Commission should permit TRS providers to terminate or refuse calls wherein the end users communicate obscene or threatening language, as described herein.

Respectfully Submitted,

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October 18, 2004